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7                   **UNITED STATES DISTRICT COURT**  
8                   **DISTRICT OF NEVADA**  
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10 FILEMON LOPEZ-CASTRO, as  
11 administrator for the estate of Eduardo  
Lopez-Hernandez, deceased, *et. al.*,

12                   Plaintiffs,  
13 v.  
14 SCOTT SIMON, *et al.*,  
15                   Defendants.

Case No. 2:11-CV-01014-KJD-CWH

**ORDER**

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17                   Presently before the Court is Plaintiffs' Motion for Partial Summary Judgment (#76). Also  
18 before the Court is Defendants' Motion to Extend Time (#79) to respond to the motion for partial  
19 summary judgment. Plaintiffs filed a response in opposition (#80) to which Defendants replied  
20 (#83).

21                   Essentially, Plaintiffs seek summary judgment against Defendant Neely on Plaintiff's 42  
22 U.S.C. § 1983 claim for excessive use of force, based on the allegation that Neely needlessly tasered  
23 decedent after he had been handcuffed and restrained. In response to the motion for summary  
24 judgment, Defendants seek an extension of time to respond to the motion asserting that Neely cannot  
25 respond to it until discovery is completed. Particularly, Defendants have identified a fact witness,  
26 Philip Alexander, whose deposition testimony has not been taken. Defendants assert that once

1 Alexander is deposed, they will then be able to support their opposition to the motion for summary  
2 judgment with admissible evidence. Defendants assert that the fact witness will testify that, even  
3 after he had been handcuffed, decedent Lopez-Hernandez continued to resist arrest, and having  
4 slipped off the handcuffs once, posed a threat to the officers and the public.

5 Having read and considered the briefing on the motion to extend time and Plaintiffs' motion  
6 for partial summary judgment, the Court finds that Defendants have provided sufficient information  
7 in accordance with Federal Rule of Civil Procedure 56(d) demonstrating that they cannot present  
8 facts essential to justify its opposition until the close of discovery. Therefore, in accordance with  
9 Rule 56(d)(1,3), the Court denies the motion for partial summary judgment without prejudice.

10 Accordingly, IT IS HEREBY ORDERED that Defendants' Motion to Extend Time (#79) is  
11 **GRANTED;**

12 IT IS FURTHER ORDERED that Plaintiffs' Motion for Partial Summary Judgment (#76) is  
13 **DENIED without prejudice.**

14 DATED this 4<sup>th</sup> day of December 2012.

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Kent J. Dawson  
United States District Judge  
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